

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 28, 43-46 and 52 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on May 3, 2010.
2. Applicant's election without traverse of Group II (claims 29-42 and 47-51) in the reply filed on May 3, 2010 is acknowledged.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 29, 35-37 and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Odet (U.S. 2005/0173370) in view of Scanga et al. (U.S. 4,094,460). Odet et al. teach a reclosable plastics cap 1 having a top panel at 22, a skirt shown above lead line 4 in figure 1, a gas barrier at 5 and 6 to inhibit gas flow through the cap, and a closed plug at lead line 25 which substantially fills a void inside the cap to define a valve adapted to fit inside and seal against an inner wall of a neck at G2 of a container B to which the cap is fitted, as shown in figures 1 and 2. The cap can be reseated.

Odet et al. disclose the claimed invention except for the aluminum foil liner being coated by plastic. Scanga et al. teach that it is known to provide a container with a liner which is plastic coated aluminum foil (see col. 3 lines 9-28). It would have been obvious to one having ordinary skill in the art at

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the time the invention was made to provide the closure assembly of Odet et al. with the liner being plastic coated aluminum foil, as taught by Scanga et al., in order to improve the sealing quality and adhesion to the container.

Regarding claim 41, Odet et al. also do not disclose that the container may be made of paperboard or composite material. Scanga et al. teach that it is known to provide a container made of paperboard. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure assembly of Odet et al. with the container being made of paperboard, as taught by Scanga et al., in order to use an inexpensive lightweight material.

5. Claims 29, 30, 32, 38, 39, 47 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laveault et al. (U.S. 2003/0178385) in view of Scanga et al. (U.S. 4,094,460). Laveault et al. teach a reclosable plastic cap 10, shown in figure 8a having a top panel at 14, a skirt at 16, a gas barrier at 128, and a closed plug at lead line 120 which substantially fills a void inside the cap to define a valve adapted to fit inside and seal against an inner wall of a neck of a container.

Laveault et al. disclose the claimed invention except for the aluminum foil liner being coated by plastic. Scanga et al. teach that it is known to provide a container with a liner which is plastic coated aluminum foil (see col. 3 lines 9-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure assembly of Laveault et al. with the liner being plastic coated aluminum foil, as taught by Scanga et al., in order to improve the sealing quality and adhesion to the container.

6. Claims 30-32, 47 and 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krall (U.S. 6,508,375) in view of Scanga et al. (U.S. 4,094,460). Krall teaches a reclosable plastics cap 14 having a top panel at lead line 32 and a skirt at 22. The liner is element 36 which has a peripheral edge that is embedded and fused into the exterior surface of the top panel 32 of the cap 14. The top panel has an opening defined by 30. The embodiment in figure 3 has a valve at lead line 54.

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Krall discloses the claimed invention except for the liner having an aluminum foil layer. Scanga et al. teach that it is known to provide a container with a liner which is plastic coated aluminum foil (see col. 3 lines 9-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure assembly of Krall with the liner having aluminum foil, as taught by Scanga et al., in order to improve the sealing qualities and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Regarding claim 50, Krall also does not disclose that the container may be made of paperboard or composite material. Scanga et al. teach that it is known to provide a container made of paperboard. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure assembly of Krall with the container being made of paperboard, as taught by Scanga et al., in order to use an inexpensive lightweight material.

7. Claims 30, 47, 49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hock (U.S. 7,021,478) in view of Scanga et al. (U.S. 4,094,460). Hock teaches a reclosable plastics cap 12 having a top panel at 20 and a skirt at 22. The liner is element 30 which has a peripheral edge that is embedded and fused into the top panel 20 of the cap 12.

Hock discloses the claimed invention except for the liner having an aluminum foil layer. Scanga et al. teach that it is known to provide a container with a liner which is plastic coated aluminum foil (see col. 3 lines 9-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure assembly of Hock with the liner having aluminum foil, as taught by Scanga et al., in order to improve the sealing qualities and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

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8. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hock (U.S. 7,021,478) in view of Scanga et al. (U.S. 4,094,460), as applied to claim 30 above, and further in view of Krall (U.S. 6,508,375). The modified closure of Hock discloses the claimed invention except for the valve. Krall teaches that it is known to provide a container with a valve (see element 54 in figure 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure assembly of Hock with the valve structure of Krall, in order to improve increase the amount of contact the closure has with the bottle opening which will improve the sealing properties especially when there are irregularities in the neck surfaces.

9. Claims 30 and 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ochs (U.S. 4,813,561) in view of Hock (U.S. 7,021,478) and Scanga et al. (U.S. 4,094,460). Ochs teaches a reclosable plastics cap 16, shown in figure 2, having a top panel at 22 with an opening at 20 and a skirt at 26. The liner is element 32.

Ochs discloses the claimed invention except for the liner having a plastic coating and being fused to the top panel. Scanga et al. teach that it is known to provide a container with a liner which is plastic coated aluminum foil (see col. 3 lines 9-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the closure assembly of Ochs with the liner having a plastic coating, as taught by Scanga et al., in order to improve the sealing qualities and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Hock teaches that it is known to provide a container with a liner which is fused to the top wall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified closure assembly of Ochs with the liner being fused to the top wall, as taught by Hock, in order to allow the user to assembly and remove the closure in one piece.

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***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art is cited for the closure and liner structure.

11. THIS ACTION IS NON-FINAL.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIKI M. ELOSHWAY whose telephone number is (571)272-4538. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Niki M. Eloshway/  
Niki M. Eloshway  
Examiner  
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nme